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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. CRECENCIO PADILLA-BAUTISTA, Defendant.	Criminal Case No. 08-CR-0205-JLS DATE: February 22, 2008 TIME: 1:30 p.m. **UNITED STATES' NOTICE OF MOTIONS AND MOTIONS FOR:** **(1) FINGERPRINT EXEMPLARS** **(2) RECIPROCAL DISCOVERY**

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and David D. Leshner, Assistant United States Attorney, and hereby files its Motions for Fingerprint Exemplars and Reciprocal Discovery in the above-referenced case. Said motions are based upon the files and records of this case together with the attached memorandum of points and authorities.

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MEMORANDUM OF POINTS AND AUTHORITIES

I

STATEMENT OF THE CASE

On January 24, 2008, defendant Crecencio Padilla-Bautista was arraigned on a one-count Indictment charging him with a violation of Title 8, United States Code, Sections 1326(a) and (b). Defendant entered a plea of not guilty.

II

STATEMENT OF FACTS

A. Defendant's Apprehension

On December 26, 2007, Border Patrol Agent A. Reyes was performing line watch duties near Campo, CA, approximately seven miles east of the Tecate, CA Port of Entry. At approximately 11:30 a.m., Agent Reyes observed a group of suspected undocumented aliens traveling northbound approximately 50 yards north of the International Border. Agent Reyes found footprints the group had left and followed the footprints for approximately 15 minutes until he encountered two individuals attempting to conceal themselves in vegetation south of State Route 94. Following a further search, Agent Reyes discovered five additional individuals hiding north of the road.

Agent Reyes conducted field interviews of the seven individuals, including Defendant. In response to the agent's questioning, Defendant admitted to being a citizen of Mexico without any documents allowing him to enter or remain in the United States. Agent Reyes placed all seven individuals under arrest, and they were transported to the Border Patrol processing center in Tecate, CA.

At approximately 4:13 p.m. on December 26, Defendant received Miranda warnings and invoked.

B. Defendant's Immigration History

Defendant is a citizen of Mexico. On December 12, 2007, Defendant was removed from the United States to Mexico pursuant to an Order of an Immigration Judge.

C. Defendant's Criminal History

On August 6, 2007, Defendant was convicted in the Circuit Court of the State of Oregon for Yamhill County of a felony count of attempted sexual abuse in violation of O.R.S. § 161.405 and was sentenced to 13 months imprisonment.

On or about April 15, 2004, Defendant was convicted in Yamhill County Circuit Court of a misdemeanor count of resisting arrest in violation of O.R.S. § 162.315 and was sentenced to seven days jail and 18 months probation.

III

UNITED STATES' MOTIONS

A. Motion For Fingerprint Exemplars

The Government requests that the Court order that Defendant make himself available for fingerprinting by the Government's fingerprint expert. See United States v. Ortiz-Hernandez, 427 F.3d 567, 576-77 (9th Cir. 2005) (Government may have defendant fingerprinted and use criminal and immigration records in Section 1326 prosecution). Identifying physical characteristics, including fingerprints, are not testimonial in nature, and the collection and use of such evidence would not violate Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969). See also Schmerber v. California, 384 U.S. 757, 761 (1966) (withdrawal of blood is not testimonial).

B. Motion For Reciprocal Discovery

The Government has and will continue to fully comply with its discovery obligations. To date, the Government has provided Defendant with 34 pages of discovery and one DVD, including reports of his arrest, his rap sheet, and copies of immigration and conviction documents. Government counsel will coordinate with defense counsel to schedule a viewing of Defendant's A-File.

The Government moves the Court to order Defendant to provide all reciprocal discovery to which the United States is entitled under Federal Rules of Criminal Procedure 16(b) and 26.2. Specifically, Rule 16(b)(1) requires Defendant to disclose to the United States all exhibits, documents and reports of testing or examination which Defendant intends to use in his case-in-chief at trial and a written summary of the names, anticipated testimony, and bases for opinions of experts the defendant intends to call at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

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IV

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court grant its motions.

DATED: January 30, 2008.

Respectfully submitted,

Karen P. Hewitt
United States Attorney

s/ David D. Leshner
DAVID D. LESHNER
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. CRECENCIO PADILLA-BAUTISTA, Defendant.	Case No. 08-CR-0205-JLS CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, DAVID D. LESHNER, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **UNITED STATES NOTICE OF MOTIONS AND MOTIONS FOR FINGERPRINT EXEMPLARS AND RECIPROCAL DISCOVERY** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Victor Pippens, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 30, 2008.

/s/ David D. Leshner
DAVID D. LESHNER